



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-20
Regulation title	Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic
Action title	Continuing competency for medical examiners
Document preparation date	10/23/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The purpose of the proposed regulatory action is to allow a waiver to requirements for continuing medical education for doctors of medicine whose practice is limited to service as a medical examiner. The action is in response to a petition for rule-making from a physician in Lee County, who is retired from active practice but is serving his community as a medical examiner and would like to be freed from the expense and time commitment of 60 hours of continuing education each biennium.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

The specific mandate for evidence of continued competency is found in:

§ 54.1-2912.1. Continued competency and office-based anesthesia requirements.

- A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.*
- B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.*
- C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.*
- D. Pursuant to § [54.1-2400](#) and its authority to establish the qualifications for registration, certification or licensure that are necessary to ensure competence and integrity to engage in the regulated practice, the Board of Medicine shall promulgate regulations governing the practice of medicine related to the administration of anesthesia in physicians' offices.*

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The Board believes that such a waiver may have the effect of a modest increase in the availability of physicians willing to serve as medical examiners in local communities. If this action had that effect, delays in determining the cause of death could be avoided, which could be important to law enforcement and to the health and safety of persons in those communities.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed change would amend section 235 to grant authority for the Board to waive all or part of the continuing education requirements for doctors of medicine or osteopathic medicine who limit their practice to serving as a medical examiner in a locality. The only requirement for continued competency would be completion of the six hours of training provided annually by the Office of the Chief Medical Examiner.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) The primary advantage to the public would be to encourage and support the older physicians, who have retired from active practice, but are willing to continue serving as a local medical examiner. Compensation for a medical examiner is minimal, so the additional expense of acquiring continuing medical education relating to clinical practice is burdensome. An exemption from continuing education for a physician practicing solely as a local medical examiner would not represent any risk of harm to the public or any diminution in the quality of health care.

2) There are no advantages or disadvantages to the agency or the Commonwealth.

3) There are no other matters of interest.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Since most mailings to the PPG list are handled electronically, there is very little cost involved. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The entities that are likely to be affected by these amendments would be those physicians who have given up their regular practice and are only working as a local medical examiner.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The Chief Medical Examiner estimates that there may be a few (less than 10) physicians who have retired from active practice, except for their service as a medical examiner. It is likely most of those would be independent practitioners (small businesses) rather than employees of larger entities.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Previously, in order to practice, even as a medical examiner, a practitioner had to maintain an active license and meet all continuing education/credentialing requirements. With these regulations, costs to the affected entities would be drastically reduced by eliminating the cost for obtaining continuing education.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Currently, regulations provide authority to the board to grant an exemption for all or part of the continuing education requirements for circumstances beyond the control of the licensee, such as

temporary disability, mandatory military service, or officially declared disasters or for a licensee who is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board. The waiver for medical examiners would be added to the current exemption authority, which is granted on a case-by-case basis upon request from the practitioner.

In granting the exemption upon request from a local medical examiner, the Board would need to be able to ensure that such a person would limit that practice to work as a medical examiner. That could be accomplished by an attestation by the physician and documentation from the Office of the Chief Medical Examiner relating to service by the physician. The Chief Medical Examiners has enthusiastically endorsed the proposed language and does not believe there would be any negative effects of such an exemption. The Board is concerned about the availability of persons who are willing to serve as medical examiners, especially in more isolated regions of the state, and believes this proposal may relieve some of the problems in retention of older physicians as medical examiners.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published in the Register on August 21, 2006 and sent to the Public Participation Guidelines list with comment requested until September 20, 2006. There was no public comment received, but staff did work with Dr. Marcello Fierro on the proposal and the Board adopted her recommendation for requiring six hours of annual ME training as a requirement for renewal.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Families would be negatively impacted by delays in the disposition of a loved one’s remains if a local medical examiner was not available and the decedent had to be sent to the Office of the Chief Medical Examiner to determine the cause of death.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
------------------------	-----------------------------	---------------------	-------------------------------

235	n/a	<p>H. The board may grant an exemption for all or part of the requirements for a licensee who is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board.</p>	<p>H. The board may grant an exemption for all or part of the requirements for a licensee who:</p> <ol style="list-style-type: none"> <u>1. Is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board; or</u> <u>2. Is practicing solely as a medical examiner, provided the licensee obtains six hours of medical examiner training per year provided by the Office of the Chief Medical Examiner.</u> <p><i>An exemption from continuing education for a physician practicing solely as a local medical examiner would not represent any risk of harm to the public or any diminution in the quality of health care. Compensation for a medical examiner is minimal, so the additional expense of acquiring continuing medical education relating to clinical practice is burdensome. According to the Chief Medical Examiner, the only continuing education that is necessary is six hours of training provided by her office each year. By meeting that requirement, a physician should remain competent to continue working in the capacity of a medical examiner.</i></p>
-----	-----	---	--